IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2525 OF 2004

Shri Vinayak Balwant Jadhav,)
age 45, of Pune, Indian)
Inhabitant, residing at)
Arambh Apartrment, Flat No.5,)
1195/41, Ghole Road, Shivaji)
Nagar, Pune-5.)...Petitioner

Versus

1. The State of Maharashtra)
2. Shri M.R.Patil, Member)
Maharashtra State Human)
Rights Commission.)

3. The Inspector General of)
Police, State of Maharashtra)
Mumbai having his office at)
the Office of the Inspectoer)
General of Police, Opp. Regal)

Cinema, Mumbai.)

4. The Superintendent of Police,)
Pune Rural, Pune.)

5. Ashabi Pathan)
r/o Badshah Talav,)
Tal. Junnar, Dist. Pune.)

6. State Human Rights)
Commission, Maharashtra.)...Respondents

Mr.M.M.Jaykar i/b M/s. Khaitan & Jaykar for Petitioner

Ms.P.H.Kantharia, APP for State

Mr.H.G.Misar with A.J.Gondwal for Respondent No.2

Mr.A.A.Mane for Respondent No.5

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATE : 17TH JANUARY, 2005

ORAL JUDMGNET : (Per Khandeparkar, J.)

1. Heard.

2. Rule. By consent, the rule made returnable forthwith.

3. Ms.S.Mishra, learned advocate appointed for Respondent No.5 is relieved, as the Respondent No.5 is being represented by the Advocate appointed by her.

4. Leave to amend the cause title of the Petition by adding State Human Rights Commission as the party Respondent No.6. The amendment to be carried out forthwith.

5. It is not in dispute that no notice was issued to the Petitioner prior to the passing of the Order dated 12th May 2003 by the Respondent Nos.4 and 6. The provisions comprised under Section 16 of Protection of Human Rights Act, 1993 clearly provide thus -

> 16. Persons likely to be prejudicially affected to be heard - If, at any stage of the inquiry, the Commission ---

> (a) considers it necessary to inquire into the conduct of any person; or
>
> (b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,
>
> it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:
>
> Provided that nothing in this section shall apply where the credit of a witness is being impeached.

The law on the point of necessity of prior hearing of the person, who can be prejudicially affected by an Order that may be passed by the Commission is clear from the above provision of law. Once it is clear that the Petitioner was not at all heard in the matter before passing the Order dated 12.5.2003, the said order cannot be sustained being contrary to the provisions of Section 16 of the said Act as well as

to the basic principles of natural justice. Hence on both the counts, the impugned order dated 12.5.2003 is hereby quashed and set aside.

6. This order will not preclude the Human Rights Commission from hearing the petitioner and passing any fresh order in relation to the complaint filed by the Respondent No.5. However, the same has to be done, as rightly submitted by the advocate for petitioner, within a stipulated period. The learned advocate for the Human Rights Commission has fairly submitted that the Human Rights Commission would dispose of the matter in case it considers it necessary to inquire into the matter afresh, as expeditiously as possible and would conclude the inquiry and pass the order in any case on or before 31st March 2005. While accepting the said statement of the learned advocate on behalf of Commission we do not consider it necessary to give any specific directions to the Human Rights Commission. In the result the Petition succeeds and the impugned order dated 12.5.2003 is quashed and set aside. The Commission is at liberty to deal with the complaint filed by Respondent No.5 bearing in mind the

provision of law contemplated under Section 16 of the Protection of Human Rights Act, 1993.

7. Needless to say that in case any action has already been taken by any authority pursuant to the order order dated 12.5.2003, the said order being set aside by this Order, such action will be null and void and will not be enforceable.

8. The petition is accordingly disposed of while making the rule absolute in above terms.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)